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E-Filed: June 14, 2010

**THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:) CASE NO.: 09-26633-BAM
) (Chapter 11)
Anthony V. Mosley,)
)
) Hearing Date: July 27, 2010
Debtor.) Hearing Time: 9:00 a.m.
)

**MOTION TO CLARIFY CONFIRMATION ORDER AND MODIFY THE
DEBTOR'S PAYMENTS TO UNSECURED CREDITORS HOLDING
ALLOWED CLAIMS UNDER HIS CHAPTER 11 PLAN OF REORGANIZATION**

Anthony V. Mosley, the debtor in the above-captioned proceeding (the “**Debtor**”), by and through his undersigned attorneys, The Schwartz Law Firm, Inc., files his Motion to Clarify the Confirmation Order and Modify the Debtor’s Payments to Unsecured Creditors Holding Allowed Claims Under His Chapter 11 Plan of Reorganization (the “**Motion**”), pursuant to Federal Rule of Civil Procedure 60(b)(1), made applicable here by Federal Rule of Bankruptcy Procedure 9024 and 11 U.S.C. 1127, and in support of the Motion, the Debtor submits the following:

FACTUAL BACKGROUND

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2 1. On March 16, 2010, the Bankruptcy Court held a confirmation hearing (the
3 “**Confirmation Hearing**”) and confirmed the Debtor’s Second Amended Chapter 11 Plan of
4 Reorganization (the “**Plan**”). The Court entered the order confirming the Plan (the
5 “**Confirmation Order**”) on April 23, 2010.
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8 2. At the Confirmation Hearing, the Debtor’s counsel inadvertently indicated that
9 the Debtor would be surrendering his property located at 4301 Cory Place, North Las Vegas,
10 Nevada (the “**Cory Place Property**”). The Debtor, however, as indicated in the Confirmation
11 Order, will surrender the property located at 2009 Englestad Street, North Las Vegas, Nevada
12 (the “**Englestad Property**”), not the Cory Place Property.
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15 3. Importantly, the Plan contemplated paying the secured creditor for the Cory Place
16 Property (“**U.S. Bank**”) in full, in accordance with the U.S. Bank’s election under section
17 1111(b) of the Bankruptcy Code. This provision in the Plan was never objected to by any party.
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19 4. In addition, in the Debtor’s Plan, attached to the Confirmation Order as Exhibit A,
20 the Debtor’s counsel inadvertently listed the Debtor’s payment plan to unsecured creditors
21 holding allowed claims of \$1,500.00 per month, whereas, the Debtor indicated in his Second
22 Amended Disclosure Statement (the “**Disclosure Statement**”) that his payment plan to
23 unsecured creditors holding allowed claims would be \$4,000.00 per month.
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26 5. Since the Confirmation Hearing, however, the Debtor experienced and continues
27 to experience significant vacancies at his properties, which are mainly occupied by indigent
28 tenants on a daily or weekly basis. In fact, the Debtor’s rental income is about 33% less than it
29 was during the disclosure statement/plan confirmation process. Accordingly, pursuant to Section
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1127 of the Bankruptcy Code, the Debtor requests the Plan be modified to reduce his plan payments to unsecured creditors holding allowed claims to \$3,000.00 per month.

6. Therefore, by this Motion, the Debtor hereby requests to (i) clear the record of the Confirmation Hearing, whereby the Debtor's counsel inadvertently indicated that the Debtor intended to surrender the Cory Place Property, not the Englestad Property, and (ii) modify the Confirmation Order to change the Debtor's Chapter 11 Plan payment obligation to unsecured creditors holding allowed claims to \$3,000.00 per month.

ARGUMENT

7. Federal Rule of Civil Procedure 60(b)(1), in accordance with Bankruptcy Rule 9024, provides:

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect.

8. The courts have long noted that a Rule 60(b) motion is to be construed liberally to do substantial justice. Laguna Royalty Co. v. Marsh 305 F.2d 817 (C.A. Tex. 1965). In addition to Rule 60(b), Rule 60(b)(1), which grants relief based upon mistake, inadvertence, surprise, or excusable neglect, must also be given liberal construction. Diversified Utilities Sales, Inc. v. Monte Fusco Excavating Contracting Co., Inc. 71 F.R.D. 661 (E.D.Pa. 1976).

9. Accordingly, the Debtor respectfully requests that the Court clarify the record of the Confirmation Hearing to indicate that the Debtor would surrender the Englestad Property, not the Cory Place Property. Moreover, U.S. Bank made an 1111(b) election with respect to its claim on the Cory Place Property. Pursuant to such election, it is conclusively deemed to have

1 accepted the Debtor's Plan. Therefore, the inadvertent mistake of the Debtor's counsel had no
2 effect on any vote to accept or reject the Plan, or the secured claim of U.S. Bank.

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4 10. Finally, 11 U.S.C. 1127(e) provides the following:

5 If the debtor is an individual, the plan may be modified at any time after
6 confirmation of the plan but before completion of payments under the plan,
7 whether or not the plan has been substantially consummated, upon request of the
8 debtor, the trustee, the United States trustee, or the holder of an allowed
unsecured claim, to-

- 9
10 (1) increase or reduce the amount of payments on claims of a particular class
provided for by the plan;
11 (2) extend or reduce the time period for such payments; or
12 (3) alter the amount of the distribution to a creditor whose claim is provided for
13 by the plan to the extent necessary to take account of any payment of such
claim made other than under the plan.

14 11. Here, the Court entered the Confirmation Order on April 23, 2010, and the Debtor
15 began making payments to the Disbursement Agent in May 2010. Accordingly, the Debtor has
16 only made 2 of the required 60 payments under the Plan to unsecured creditors holding allowed
17 claims. Thus, the plan payments are ongoing. Moreover, as the Plan provides for pro rata
18 payments on a quarterly basis, the Disbursement Agent has not yet made any pro rata payments
19 to unsecured creditors, with the first payment scheduled for July 1, 2010. As a result, the Plan
20 has not been substantially consummated.

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22 12. Furthermore, section 1127(e)(1) allows for the Plan to be modified to increase or
23 reduce the amount of payments on claims of a particular class provided for by the plan. Here,
24 the Debtor desires to reduce the monthly payments to only unsecured creditors holding allowed
25 claims under the Plan. As indicated above, the Debtor's rental income for his properties dropped
26 by nearly 33%, as several properties remain vacant. As a result, the Debtor's rental income is
27 now nearly \$6,000.00 less per month. Therefore, the Debtor proposes that his monthly payment
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1 amount to unsecured creditors holding allowed claims be modified in the Plan to \$3,000.00 per
2 month.

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4 **CONCLUSION**

5 Wherefore, the Debtor requests that this Court (i) grant his Motion (ii) and grant such
6 other relief the Court deems just and proper.

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8 Dated this 14th day of June, 2010.

9 Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing was sent via the Court's CM/ECF System on June 14, 2010 to the following:

MICHAEL R. BROOKS on behalf of Creditor WASHINGTON FEDERAL SAVINGS
jsallade@brooksbaauer.com

MICHAEL W. CHEN on behalf of Creditor U.S. Bank National Association, as Trustee for BNC Mortgage Loan Trust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 c/o Chase Home Finance, LLC
yvette@ccfirm.com

JACQUELINE A. GRUBER on behalf of Creditor DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE IN TRUST FOR THE BENEFIT OF THE CERTIFICATEHOLDERS FOR ARGENT SECURITIES TRUST 2005-W4, ASSET-BACKED PASS-THROUGH CERTIFICATES SERIES 2005-W4
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U.S. TRUSTEE - LV - 11
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LES ALLEN ZIEVE on behalf of Creditor Ocwen Loan Servicing, LLC
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ACE C VAN PATTEN on behalf of Creditor DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE IN TRUST FOR THE BENEFIT OF THE CERTIFICATEHOLDERS FOR ARGENT SECURITIES TRUST 2005-W4, ASSET-BACKED PASS-THROUGH CERTIFICATES SERIES 2005-W4
avanpatten@piteduncan.com, avanpatten@piteduncan.com

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S.

Mail on June 14, 2010 to the following:

Anthony Mosley 1845 Fairhaven Street Las Vegas, Nevada 89108	American Home Mortgage Servicing 4600 Regent Blvd Ste 200 Irving, TX 75063
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Dept of Employment, Training and Rehab Employment Security Division 500 East Third Street Carson City, NV 89713	Amex Po Box 297871 Fort Lauderdale, FL 33329
--	--

IRS P.O. Box 21126 DPN 781 Philadelphia, PA 19114	Bank Of America 475 Crosspoint Pkwy Getzville, NY 14068
--	---

Nevada Dept of Taxation, BK Section 555 E. Washington Ave. #1300 Las Vegas, NV 89101	Cap One Attn: C/O TSYS Debt Management Po Box 5155 Norcross, GA 30091
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Acct Corp 4955 South Durango Las Vegas, NV 89113	Capital 1 Bank Attn: C/O TSYS Debt Management Po Box 5155 Norcross, GA 30091
--	---

Allstate Adj 1050 E Flamingo Rd Las Vegas, NV 89119	Cba/equity One 121 Woodcrest Rd Cherry Hill, NJ 08003
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Amc Mortgage Services Attn: Bankruptcy Dept. Po Box 11000 Santa Ana, CA 92711	Chase Manhattan Mortgage Attention: Research Dept. G7-PP 3415 Vision Drive Columbus, OH 43219
--	--

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Hanover, MD 21076

Las Vegas Athletic Club
2655 S. Maryland Pkwy
Las Vegas, NV 89109

Citifinancial Retail Services
Po Box 140489
Irving, TX 75014

Litton Loan Servicing
Attention: Bankruptcy
4828 Loop Central Drive
Houston, TX 77081

Clark County Treasurer
500 S Grand Central Parkway
PO Box 551220
Las Vegas, NV 89155-1220

Mercury Finance
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Las Vegas, NV 89121

Countrywide Home Lending
Attention: Bankruptcy SV-314B
Po Box 5170
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Mountain View Hospital
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Cincinnati, OH 45274-0766

Desert Radiologists
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Westlake Villa, CA 91362

Emc Mortgage
Attention: Bankruptcy Clerk
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NCO Financial Systems
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Fremont Emergency SVCS-Your ER
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Nevada Heart and Vascular Center
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1 Sierra Health and Life
2 P.O. Box 15645
3 Las Vegas, NV 89114-5645

4 Texaco / Citibank
5 Attn.: Centralized Bankruptcy
6 PO Box 20507
7 Kansas City, MO 64195

8 Toyota Motor Credit Co
9 19001 South Western Ave
10 Dept. WC11
11 Torrance, CA 90501

12 Washington Federal Savings
13 300 S. Ellsworth
14 Albany, OR 97321

15 Wells Fargo Home Mtg
16 Attention: Bankruptcy Department MAC-X
17 3476 Stateview Blvd.
18 Fort Mill, SC 29715

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20 /s/Magda Cardona
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